

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

OKANOGAN COUNTY; WILBUR G.  
HALLAUER and JOSEPHINE P.  
HALLAUER, husband and wife;  
THERESA HALLAUER-JOYNES, as  
her separate estate; JAMES  
M. LEMA, a single man; and  
TERESA A. HALLAUER and JAMES  
M. LEMA as Trustees of the  
TRUST FOR CHILDREN AND  
GRANDCHILDREN established  
under the Last Will and  
Testament of Merry E.  
Hallauer,

Plaintiffs,

vs.

UNITED STATES OF AMERICA;  
KEN SALAZAR, in his official  
capacity as Secretary of the  
Interior; UNITED STATES  
DEPARTMENT OF THE INTERIOR;  
BOB ABBEY, in his official  
capacity as Director of the  
Bureau of Land Management;  
and BUREAU OF LAND  
MANAGEMENT,

Defendants.

NO. CV-10-166-LRS

**ORDER GRANTING DEFENDANTS' MOTION  
TO DISMISS**

BEFORE THE COURT is Defendants' Motion to Dismiss, Ct. Rec. 13,  
filed October 7, 2010 and noted, without oral argument, on December  
14, 2010.

On May 26, 2010, Okanogan County and six private plaintiffs (the

1 "Hallauer Plaintiffs") filed this action under the Quiet Title Act, 28  
2 U.S.C. § 2409a ("QTA"). Plaintiffs seek to quiet title in Okanogan  
3 County against the United States rights-of-way over two roads - the  
4 Palmer Mountain Road (also known as the Washburn Lake Road) and the  
5 Black Bear Road (also known as the War Eagle Road) - located on Palmer  
6 Mountain in Okanogan County, Washington. Compl. ¶ 3.11.

7 Plaintiffs contend that Okanogan County acquired rights-of-way  
8 over these roads pursuant to Revised Statute 2477 and Revised Code of  
9 Washington 36.75.080. Plaintiffs assert that the Palmer Mountain Road  
10 and the Black Bear Road "have both been extensively used by the public  
11 for many decades and are relied upon for access to private properties  
12 and for recreational and commerce purposes." Id. ¶ 3.15.

13 Defendants move for dismissal for several reasons. First and  
14 foremost, Defendants argue that the under Fed. R. Civ. P. 12(b)(1),  
15 this court lacks subject matter jurisdiction to hear Plaintiffs' claim  
16 because the QTA's statute of limitations has run. Specifically, the  
17 QTA limits its waiver of sovereign immunity to actions commenced  
18 within twelve years of the date a plaintiff knew or should have known  
19 of the claim of the United States to the property interest at issue.  
20 28 U.S.C. 2409a(g).<sup>1</sup> Defendants state that Plaintiffs knew or should  
21 have known that the United States claimed an interest in the Palmer  
22 Mountain Road and the Black Bear Road adverse to Plaintiffs' alleged  
23 public rights-of-way prior to May 26, 1998, the applicable date for  
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25 <sup>1</sup> 28 U.S.C.A. § 2409a(g), providing, further, that such action  
26 will be deemed to have accrued on the date the plaintiff or the  
27 plaintiff's predecessor in interest knew or should have known of the  
claim of the United States.

1 purposes of the statute of limitations.

2 Defendants also argue that in addition to running afoul of the  
3 QTA's statute of limitations, the Hallauer Plaintiffs must be  
4 dismissed from this action because they do not -- and cannot -- allege  
5 a property interest in any of the purported public rights-of-way at  
6 issue. Accordingly, they are not proper plaintiffs to bring a QTA  
7 claim for a public right-of-way.

8 Finally, Defendants assert that the complaint should also be  
9 dismissed because Plaintiffs fail to satisfy the pleading requirements  
10 of the QTA. The QTA requires a plaintiff to "set forth with  
11 particularity the nature of the right, title, or interest which the  
12 plaintiff claims in the real property, the circumstances under which  
13 it was acquired, and the right, title, or interest claimed by the  
14 United States." See 28 U.S.C. § 2409a(d).

15 Plaintiffs responded on November 15, 2010, collectively conceding  
16 that the QTA's twelve year statute of limitations had begun to run in  
17 1996 and that the case should therefore be dismissed. (Ct. Rec. 19 at  
18 3). Plaintiffs, however, state that dismissal of this case pursuant  
19 to the statute of limitations, is not a determination on the merits of  
20 the claim that the subject roads are Revised Statute 2477 public  
21 roads.

22 The court finds the applicable date for purposes of the QTA's  
23 statute of limitations is May 26, 1998. Based on the affidavits and  
24 supporting documentation before the court and Plaintiffs' concessions,  
25 both Okanogan County and the Hallauer Plaintiffs knew or should have  
26 known well before that date that the United States (acting through  
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1 BLM) claimed an interest adverse to Plaintiffs' alleged public highway  
2 rights-of-way. Therefore, pursuant to Fed. R. Civ. P. 12(b)(1), this  
3 court lacks subject matter jurisdiction and plaintiff's claims are  
4 hereby dismissed, without considering the merits of this case.

5 **IT IS ORDERED** that:

6 1. Defendants' Motion to Dismiss, **Ct. Rec. 13**, filed October 7,  
7 2010 is **GRANTED**. Plaintiff's claims are hereby dismissed.

8 2. The District Court Executive is directed to enter judgment  
9 consistent with this order.

10 3. The file shall be **CLOSED** in this matter.

11 **IT IS SO ORDERED.** The District Court Executive is directed to  
12 enter this Order and forward copies to counsel.

13 **DATED** this 14th day of December, 2010

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15 ***s/Lonny R. Suko***

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17 LONNY R. SUKO  
18 CHIEF UNITED STATES DISTRICT JUDGE  
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